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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/057,423	01/24/2002	Simon Alexander Hanson Rose	AG/3-21900/A/AC 509/DIV 2	1070
324	7590	05/18/2004	EXAMINER	
CIBA SPECIALTY CHEMICALS CORPORATION PATENT DEPARTMENT 540 WHITE PLAINS RD P O BOX 2005 TARRYTOWN, NY 10591-9005			QAZI, SABIHA NAIM	
			ART UNIT	PAPER NUMBER
			1616	

DATE MAILED: 05/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/057,423

**Applicant(s)**SIMON ALEXANDER HANSON  
ROSE**Examiner**

Sabiha N. Qazi

**Art Unit**

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) 1,6-8,10,11 and 17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1, 6-8, 10, 11 and 17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

Art Unit: 1616

***Final Office Action***

This application is a division of US 09/838,430, filed on April 19, 2001, now abandoned, which is a division of US 09/361,816, filed on July 27, 1999, now pending.

1. Acknowledgement is made of the response filed on 2/18/04. Amendments are entered. Claims 1, 6-8, 10, 11 and 17 are pending. No claim is allowed at this time.
2. The Examiner carefully considered arguments and not found persuasive. Even though claims are amended they are still considered obvious for the reasons cited in our previous action. Examiner disagree with the argument that EP '911 does not disclose in a single example the Applicants ratio of ionic to nonionic copolymers in combinations with a soil nutrient. WO '938 only exemplifies a particular anionic (a water-soluble hydrolyzed maleic anhydride) polymer. Applicants must note that there is no example in their own specification for the invention they are claiming therefore, even if for argument prior does not have any example they also do not have example of the claimed invention. Therefore, this argument is considered as not a valid argument.
3. Claim 1 is amended to 60 to 80% anionic monomer and 20-40% nonionic monomer, to overcome the rejection. No example was found showing these amounts. In absence of unexpected results claims are considered obvious over the prior art of record.

In claim 7, see (b) can be 2-5 % wt%, which is not in claim 1. Claim 1 was amended but dependent claim was not.

***Specification***

4. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

In claim 1 and 8 "fertilizer" is typed as "fertiliser". Correction is needed.

5. Claims 1, 6-8,10, 11 and 17 stand rejected under 35 U.S.C. 103(a) as being unpatentable over EP 586,911 and Sylling et al. WO 85/01938. The references teach polymeric soil improvement compositions, which embraces applicant's claimed invention. See the entire

Art Unit: 1616

documents especially lines 10-30 on page 3; examples and claims in Sylling et al. and lines 36-50 and lines 1-30 on page 3; lines 4-40, page 4; Tables and examples.

**1. Determining the scope and contents of the prior art.**

EP '911 teaches a composition for the treatment of soil containing an anionic fertilizer and anionic polymer such as polyacrylamide and 97 to 0 mole percent of different water-soluble monomer or salts thereof. See the entire document especially lines 36-50 and lines 1-30 on page 3; lines 4-40, page 4; Tables, examples and claims. The composition is added to water prior to irrigating an area of soil. See claims 8 and 10.

WO reference teaches a composition for soil treatment comprising anionic polymeric materials such as copolymers of acrylic acid, methacrylic acid (lines 11-21 on page 4).

**2. Ascertaining the differences between the prior art and the claims at issue.**

Prior art EP '911 teaches gel composition and instant is aqueous composition. Prior art does not disclose the specific viscosity, which is instantly claimed.

**3. Resolving the level of ordinary skill in the pertinent art.**

Prior art EP '911 teaches gel composition and instant is aqueous composition. These are considered obvious to one who is familiar with the art. Gel or solution form of a composition is considered optional in absence of unexpected results. See for example Erythromycin, which is sold in the market as 2% gel, as 2% solution and as 2% ointment. See page 3060 in "drug, facts and comparisons, 1999 edition, (A Wolters Kluwer Company, St Louis). So the different forms as cited above are optional and would have been obvious at the time of invention.

a) Gels are prepared in large amount of water, see for instance page 1518, (Remington reference), where ephedrine sulfate gel is prepared by adding 830 ml of water for 10.0 gms of ephedrine.

b) The viscosity would be the same for anionic polymer taught by EP '911. It is known that a chemical compound and its properties for example viscosity, melting point, density etc. are inseparable to the compound. See *In re Spada*, 15 USPQ (2d) 1655, 1658.

c) Sylling reference teaches an aqueous composition.

**4. Considering objective evidence present in the application indicating obviousness or nonobviousness.**

Art Unit: 1616

One having ordinary skilled in the art would be motivated at the time of invention to prepare beneficial compositions for the improvement of soil because prior art cited above teach the composition useful for the same. There has been ample motivation provided by the prior art to prepare the composition as instantly claimed. Since the viscosity of the prior art is not disclosed, presently claimed invention is considered obvious in absence of showing ant unexpected results. Applicants have the burden of proof that the viscosity of the prior art does not overlap with instant invention.

6. Claims 1, 6-8, 10, 11 and 17 stand rejected under 35 U.S.C. 103(a) as being unpatentable over JP 51-124578. The reference teaches an aqueous solution-form soil conditioning fertilizer comprising an acrylamide-potassium acrylate copolymer, which embraces the applicant's claimed invention. The reference also teaches that it is preferred to use the copolymer in an amount of about 0.001 to 0.05% by weight, based on the weight of the soil, but if desired, the copolymer may be used in a larger or smaller amount. See the entire document, especially Section 2 of Page 1, all Examples, and Claims.

Instant claims differ from the prior art in having a generic scope.

One skilled in the art would be motivated to prepare the aqueous solution-form fertilizer as has been presently claimed because the prior art teaches the ranges in concentration and the amount of diluted fertilizer needed for soil aggregation.

In absence of any criticality and/or unexpected results of specific combination or ratio the compositions as claimed is considered obvious over the prior art of record.

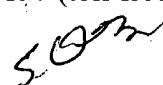
#### ***Communication***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sabiha N. Qazi whose telephone number is (571) 272-0622. The examiner can normally be reached on any business day.

Art Unit: 1616

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Sabiha N. Qazi  
Primary Examiner  
Art Unit 1616

5/15/04